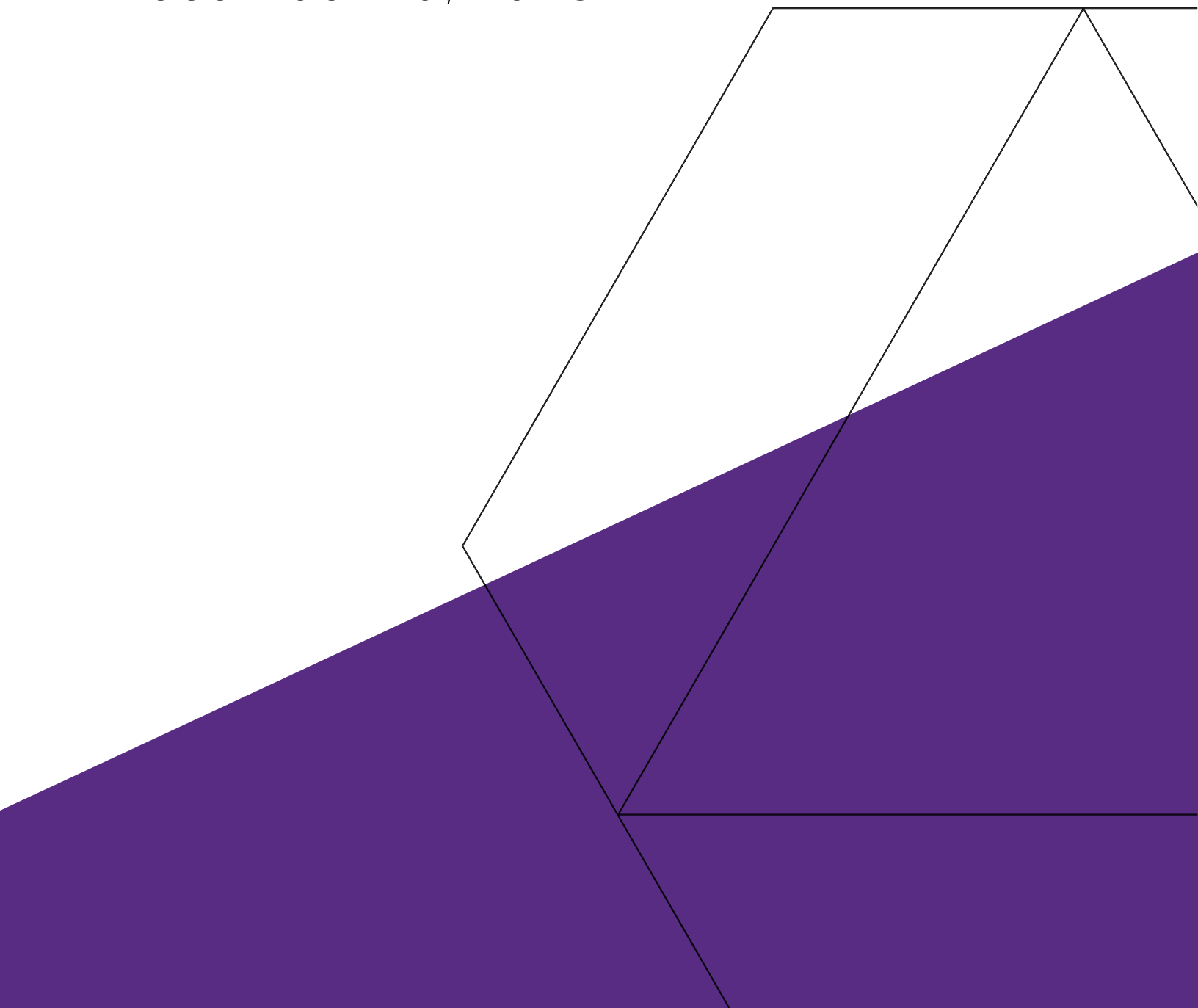




Canadian Construction
Association
Best Practices Services

Standards Practices Tour

December 20, 2023



Standards Practices Tour — Collaboration has never been more important

The Canadian Construction Association (CCA) is industry first, and as such, we aim to understand the procurement and project delivery issues facing the Canadian construction industry by engaging directly with not only our membership but also the many players involved in the delivery of projects of all sizes. As promised in our report last year, CCA's 2023 Standard Practices Tour saw us actively engaging with owners to educate them on risk sharing and the consequences of onerous clauses while promoting and explaining the value of using Canadian Construction Documents Committee (CCDC) documents. The work is only starting, but already we are seeing an uptick in interest at all levels of government.

Thank you to our Local Construction Association partners – Cliff Kshyk (Southern Interior Construction Association), Sam Sanderson (Prince Edward Island Construction Association), Shannon Friesen and Kevin Dureau (Saskatchewan Construction Association), and Duncan Williams (Construction Association of Nova Scotia) for your support in this engagement initiative.

Objective

The Standard Practices Tour is an engagement opportunity for CCA to collect information on the top procurement issues and project delivery pain points experienced by members from across Canada. The findings help CCA to develop and propose solutions to educate owners, both public and private, on how to deliver projects in a more collaborative and cost-effective way. They also help to inform other CCA initiatives.

Over 300 industry members representing the civil, trade, general contractor, and supplier sectors and 10 public owners participated in these sessions. About 65 per cent of participants work on public projects (federal, provincial, and municipal governments as owners), and almost all have experience working with private owners as well.

Summary of issues and implications

Public owner-Contractor partnership: we are making progress, but we are still not there.

Based on our discussions, there has been some improvement in owners engaging with contractors earlier in the process. This is a step in the right direction toward using more progressive delivery models, and hints at public owners being open to explore different options in order to deliver projects more efficiently.

Misunderstanding and lack of trust between contractors and owners remain issues. Owners continue to mitigate their risk by transferring it to the contractor. The lack of qualified employees is a massive hurdle to the planning, development, and delivery of projects, to which their solution is to transfer the risk to the contractor.

In the public sector, the time from planning and concept to ground-breaking is too long, resulting in contractors having to inflate quotes to mitigate against future price escalation risk (especially in lump sum projects where there is no recourse), including more costly and difficult to obtain insurance/bonding. In a world where contractors are still fully booked, it represents a major risk for taxpayers.



The use of onerous clauses: enough is enough!!

The use of onerous clauses is still a major issue and has been increasing over the last few years, as many public owners believe that including such clauses increase the probability of a project's positive outcome. However, onerous clauses can scare away prospective bidders and result in inflated project costs as contractors seek to protect themselves against undue risks. Such clauses also tend to create disengagement and conflict, reduce open communication between players, and are often settled through litigation.

The types of clauses listed below are just a few examples of onerous clauses that came up during our tour. All contractors should be aware of these clauses before submitting a bid. The risk transfer is just too high and may put the security of the contractor's firm at risk.

- Excessive liquidated damages and limiting rights to extensions in contract time.
- Removing indemnity and waiver obligations of the owner but not the contractor.
- Placing cost and time impacts for unforeseen conditions onto the contractor.
- Assigning the contractor risk and responsibility for errors and omissions in the contract documents.
- Giving the owner more power in terminating the contract and limiting the contractor's entitlement upon termination.

What we also heard:

- The awarding period in a world of inflation is just too long.
- Change Orders lack details, are often unclear, and need to be approved faster.
- The owners' misunderstanding of how to deliver a project creates an unrealistic delivery schedule from the owner.
- Lack of construction understanding and skill in the procurement world (mostly at the municipal level) is still a major issue.





What are we doing about it?

The education of owners, private and public, is the key to solving many of these issues. As the national association representing the Canadian construction industry, CCA, in collaboration with our integrated partners and supported by our five National Advisory Councils, is committed to delivering on this.

Education and engagement with owners include:

- Demonstrating the value of using CCDC documents.
- Educating and promoting progressive delivery models for major projects.
- Informing owners on the importance of providing quality drawings.
- Campaigning for a long-term infrastructure investment plan that is informed by an independent advisory group, holding politicians accountable.
- Providing resources and assisting LCAs in their effort to educate provincial/municipal owners.

As governments will need to make tough decisions in relation to budget priorities in the near future, collaboration is the key to delivering projects efficiently. The construction industry is essential to building a strong foundation and to collaborating with all levels of government to Build a Better Canada. CCA is your trusted partner in that journey.

The entire CCA team would be happy to receive any comments you have and look forward to partnering with the industry and our partner associations to advance these priorities. You can reach me at:

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